

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY M. O'MALLEY and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 00-1705; Oral Argument Held November 8, 2001;
Issued March 25, 2002*

Appearances: *Josh J.T. Byrne, Esq.*, for appellant; *Julia Mankata, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are whether: (1) appellant's right rotator cuff tear is causally related to the employment injury that occurred on October 23, 1994; (2) whether appellant sustained a recurrence of total disability on or about December 6, 1995 that was causally related to her October 23, 1994 employment injury; and (3) whether the Office of Workers' Compensation Programs met its burden of proof to terminate medical benefits for the accepted conditions of cervical and lumbar strain and bilateral contusions of the arms.

On October 23, 1994 appellant, then a 46-year-old mailhandler, sustained an injury while in the performance of her duties.¹ The Office accepted her claim for the conditions of cervical and lumbar strain and bilateral contusions of the arms. Appellant received compensation benefits.

Appellant sustained a recurrence of disability on November 4, 1994. She returned to light duty on January 2, 1995 with no lifting over 10 pounds, no kneeling and no bending. On March 25, 1995 appellant was involved in a motor vehicle accident unrelated to her federal employment. She subsequently returned to light duty but filed a claim asserting that she sustained recurrence of total disability on December 6, 1995.² Appellant stated that her hand and torn right shoulder were still healing from October 23, 1994 to December 1995 and that she never could raise her arm above the shoulder for time cards. She attributed the recurrence to

¹ She described the incident as follows: "Unload APC, over full of mailbags, used steel angle iron to unlock door for it was jammed with mailbags over top. Door flew open all bags cause me to fall into Belt four. Fell onto buttocks into conveyor belt four backwards. BMC full with broken wheel beside mens' room."

² Appellant testified on July 23, 1996 that she missed three days of work from December 9 to December 11, 1995.

getting mail out of bags, tossing it, getting 3,000 pounds of mail on Sunday night, sitting on a chair in the center of the floor with two other men aggravating her injuries.

Emergency room records show that appellant presented on December 6, 1995 with complaints of right hand pain after work without new trauma. Findings included strength at 4/5 throughout the right upper extremity, decreased range of shoulder motion secondary to pain at the rotator cuff, sensation intact, vascularity intact and full range of hand motion without Tinel's sign. The initial assessment included hand pain not otherwise specified.

Appellant followed up with Dr. John S. Taras in the hand clinic on December 8, 1995. Dr. Taras reported that his examination of appellant's right hand was normal: "[Appellant] was here specifically for us to address some complaints in her hand. We saw no basis for her problem that could be attributed to an abnormality in the hand. She had a completely normal examination and was nontender at the site of reported pain.... I see no evidence of a work injury in the hand."

Appellant returned to the emergency room on October 9, 1995. Examination of the right upper extremity showed no swelling or erythema or deformity of the right hand. The impression was right hand pain.

Appellant returned to regular duty without wage loss after December 11, 1995 and continued working until June 4, 1996, when she stopped work.

In a report dated January 15, 1996, Dr. Michael J. Pisano related appellant's history of injury and complaints. He described his findings on examination, including pain and tenderness on palpation of the right hand with paresthesia in the radial palmar aspect. Range of motion was limited and painful. Dr. Pisano diagnosed cervical radiculopathy; acute cervical myofascitis; acute cervical strain; acute lumbosacral myofascitis; acute lumbosacral strain; right rotator cuff tear; and right carpal tunnel syndrome. Dr. Pisano stated: "[Appellant] reinjured her right hand on December 6, 1995 while pulling mail out of mailbags, she presently is wearing a hand splint."

A conflict in medical opinion arose between appellant's physicians and an Office referral physician on whether appellant had recovered from the accepted medical conditions. To resolve the conflict, the Office referred appellant to Dr. Martin A. Blaker, an orthopedic surgeon. Dr. Blaker found no residuals of the October 23, 1994 employment injury and reported that appellant required no further medical care. On April 11, 1997 an Office hearing representative found that radiological evidence of a full thickness rotator cuff tear on the right raised serious doubt as to Dr. Blaker's opinion and warranted a supplemental opinion from the referee medical specialist. Dr. Blaker submitted a report dated May 9, 1997, but on December 18, 1997 an Office hearing representative found his opinion to be deficient in resolving the conflict and to have created a separate conflict on whether appellant had a right rotator cuff tear. The Office hearing representative remanded the case for referral to a second referee medical specialist to resolve whether appellant had recovered from the effects of her work-related conditions of cervical strain, lumbar strain and bilateral arm contusions and if so, when. The new referee was also to resolve the conflict over whether appellant had a right rotator cuff tear. If so, the referee was to offer a reasoned medical opinion on whether this condition was caused by the October 23,

1994 employment injury and if so, whether it caused any disability and need for medical treatment.³

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Paul L. Liebert, a Board-certified orthopedic surgeon. In a report dated April 1, 1998. He stated that he had examined appellant on February 16, 1998. Dr. Liebert related appellant's history of injury and subsequent treatment. He reviewed magnetic resonance imaging scans (MRI) provided by appellant and the medical records supplied by the Office. After reporting his findings on physical examination, Dr. Liebert responded to questions posed by the Office:

"1. In my opinion, [appellant] has fully recovered from the soft-tissue injuries she sustained to her cervical and lumbar spine, as well as bilateral upper extremities as the result of the work injury on October 23, 1994. She had, by history and on review of the voluminous medical documents, sustained a cervical and lumbosacral spine sprain, which by history exacerbated an underlying degenerative condition in these areas but, as of my evaluation, she has fully recovered. Although she may have again exacerbated these underlying conditions as the result of the subsequent motor vehicle accident reported, I would have anticipated full recovery well within the time frames discussed.

"I found on examination no evidence of any ongoing pathology in the upper extremities including the right shoulder. If [appellant] did in fact sustain a contusion to the shoulders and upper extremities, I found no evidence of any residual effects as of my evaluation. She had neither rotator cuff strength loss nor any true signs of impingement on either shoulder. Although by MRI report this claimant had a small insertional tear of the supraspinatus tendon in the right shoulder, this was more likely than not on the basis of degeneration given the MRI findings and her age. There was no retraction of the tendon noted on the report and her strength was well preserved in terms of the rotator cuff on my exam[ination].

"I would have anticipated full recovery from her injuries to these areas, given her subsequent motor vehicle accident, within a 1 to 1 to 1-1/2 [sic] year time frame from October 23, 1994.

"2. In my opinion, [appellant] does not have a shoulder condition which is medically connected to the work injury October 23, 1994. Although, as I stated above, she has a documented rotator cuff tear in the right shoulder, it is my opinion that this is on the basis of degeneration and not trauma. On the basis of my physical examination, [appellant] is not in need of further medical treatment with regards to the contusion of her right upper extremity as the result of [the] incident [on] October 23, 1994. Whether or not further degenerative changes

³ The hearing representative noted that the Office had neither accepted nor denied appellant's claim that she sustained a recurrence of disability on December 6, 1995 causally related to her October 23, 1994 employment injury.

occur in the rotator cuff and shoulder is a matter of speculation at this point but would not be causally related to the October 23, 1994 incident.

“3. The alleged swelling of the right hand reported on December 6, 1996 is not causally related to the incident of October 23, 1994. There is poor documentation of any significant pathology in her right hand, which could explain her subjective complaints of ‘blowing up’ of the right hand in terms of swelling. Certainly, as of my evaluation, she had no objective signs corroborating her vague subjective complaints regarding her hand.

“4. It is my opinion, on the basis of my examination February 16, 1998, that [appellant] could return to her preinjury (October 23, 1994) position without restriction with regards to the injuries sustained on October 23, 1994. However, I must add that because of the underlying degenerative condition of her back and especially her neck as well as the right rotator cuff, I would recommend limitations with regards to lifting especially with the right upper extremity. These would closely follow those recommended by Dr. Feline (5 pounds limitation to countertop level).

“Since the right hand swelling incident is not in my opinion related to the October 23, 1994 incident, there was no reason in my opinion for [appellant] being ‘totally disabled’ from December 9 through December 11, 1995. If she had some unrelated problem with her right hand because of overuse just prior to that onset of swelling, this would be separate in causality from the October 23, 1994 incident and certainly on review of the records, not totally disabling [appellant] from some type of gainful employment during that period of time. I would have restricted her if she had any physical signs at the time of swelling in the right hand wrist in terms of lifting and placed a brace on her hand with full use of the left upper extremity. However, as the records are somewhat limited with regards to documentation of the hand-swelling incident including the emergency room record from Our Lady of Lourdes Hospital, it is almost impossible for me to comment on this further.

“5. I see no reason why [appellant] could not have returned to full duty in terms of her injuries subsequent to the October 23, 1994 incident beginning June 5, 1996.”

On April 29, 1998 the Office issued a notice of proposed termination of medical benefits. The Office found that Dr. Liebert’s opinion established that the effects of the work injury had ceased, that appellant had no shoulder condition causally related to the work injury and that no current work restrictions were related to the work injury. The Office also found that appellant was not disabled in December 1995 on account of the work injury, nor was she disabled for work beginning June 5, 1996 on account of the work injury. The Office proposed to terminate medical care and to deny the recurrence of disability.

Appellant submitted additional reports from her attending physicians. The Office referred these reports to Dr. Liebert for comment. In a supplemental report dated October 12, 1998, he reviewed the additional reports and acknowledged that there obviously was a difference

of medical opinion with appellant's physicians regarding the causality of appellant's current condition and symptomatology:

"It is not my intention to engage Dr. [Scott M.] Fried[, a Board-certified orthopedic surgeon] or any of [appellant's] treating physicians for that matter, in any sort of personal or professional challenge. I was asked to render an orthopedic opinion, on the basis of the provided records as well as my own physical examination and experience, as to the causality of the claimant's current symptomatology. As was documented in my physical examination of [appellant], there were numerous signs of both nonphysiologic responses to the tests, which I performed, as well as signs of symptom magnification. I do agree that [appellant] has a functional overlay which impacts on her current physical condition and which might best be addressed by the services of a qualified psychiatric consultant.

"As I noted in my report, [appellant] does indeed have a full thickness tear of her rotator cuff. However, this tear was described as small, without retraction and associated with an acromial spur. Placing this in context with [appellant's] age as well as my own experience dealing with similar shoulder problems in my own patients, this type of tear is more on the basis of degeneration than on any single isolated traumatic event. Dr. Fried references the fact that I found no evidence of ongoing pathology or problems with regards to [appellant's] shoulder when 'two shoulder specialists' (Dr[s]. Iannotti and Fenlin) found pathology. Dr. Fenlin did diagnose a small insertional tear of the supraspinatus tendon with an associated acromial spur without retraction. A five-pound lifting limit at countertop level was imposed. Dr. Iannotti also diagnosed a small full thickness rotator cuff tear of the right shoulder but opined that [appellant's] right shoulder pathology was *not* the major source of her upper extremity complaints. Neither Drs. Fenlin [n]or Iannotti indicated in their records any traumatic basis for this tear. My examination of [appellant's] shoulder, although not remarkable for any rotator cuff weakness, was associated nonetheless with pain on both Hawkins and Neer's testing, suggestive of impingement but not causally related to the incident in question.

"As far as [appellant's] ability to return to work is concerned, although it is my opinion that she could return to her preinjury level without restriction, this was strictly on the basis of injuries which she sustained as the result of the October 23, 1994 incident. I would have anticipated full recovery from these soft tissue injuries within a six to nine month time frame. I had further qualified my comments, however, advising restrictions on the basis of the constellation of her current symptoms and physical findings, which are not in my reasoned medical opinion causally related to the incident in question. I did not find any right shoulder *injury-related* pathology, which would impact on her ability to return to the workforce at her preinjury level of employment.

"With regards to Dr. Fried's comments regarding [appellant's] diagnosis of peripheral nerve entrapment, I assume, though Dr. Fried does not specifically

state this, that he is referring to the electrodiagnostic study done on May 27, 1996 by Mr. Richard Reid. On my review of the raw data of this study, as I stated in my report, there were no signs of denervation indicating any cervical radiculopathy. My physical findings suggested, but were not conclusive for, multiple peripheral entrapment. Although I do not necessarily disagree with Dr. Fried's diagnosis of multiple peripheral entrapment in the upper extremities in the claimant, I do not believe this is in any way causally related to the incident in question which occurred October 23, 1994.

"The conclusions expressed in my report stand and are unchanged in light of the reviewed additional records noted above." (Emphasis in the original.)

In a decision dated March 25, 1999, the Office finalized its proposed termination of compensation benefits on the grounds that appellant had recovered from the effects of her October 23, 1994 work injury.

In a decision dated January 19, 2000, an Office hearing representative affirmed the termination of appellant's compensation benefits. The hearing representative found that the weight of the medical evidence was accorded to the opinion of Dr. Liebert, the referee medical specialist.

The Board finds that appellant has not met her burden of proof to establish that her right rotator cuff tear is causally related to the employment injury that occurred on October 23, 1994.

A claimant seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,⁵ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁶

The Office accepted that appellant sustained a cervical and lumbar strain and bilateral contusions of the arms on October 23, 1994. It remains for appellant to establish that her right rotator cuff tear is causally related to that employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁷

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

Appellant has submitted medical opinion evidence from Dr. Fried stating that the full thickness tear of the supraspinatus tendon was consistent with her work-related injury and was an obvious injury that occurred as a result of the work-related incident. Although this tends to support a causal connection, Dr. Fried's opinion is of diminished probative value. He did not explain how the torn tendon was consistent with the incident that occurred on October 23, 1994. Further, the history of injury Dr. Fried obtained from appellant is inconsistent with the contemporaneous account she provided on her claim form and with the accounts given by witnesses to the event. Medical conclusions unsupported by rationale are of little probative value.⁸ Medical conclusions based on inaccurate or incomplete histories are also of little probative value.⁹

Because none of appellant's physicians has related an accurate history of the incident that occurred on October 23, 1994 and because none has offered a well-reasoned explanation of how this incident caused appellant's right rotator cuff tear, the medical opinion evidence submitted by appellant is insufficient to discharge her burden of proof.

The Board also finds that appellant has not met her burden of proof to establish that she sustained a recurrence of total disability on or about December 6, 1995 that was causally related to her October 23, 1994 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.¹⁰

Appellant has submitted no such medical opinion evidence to support her claim of recurrence. The January 15, 1996 narrative report of Dr. Pisano stated that appellant reinjured her right hand on December 6, 1995 while pulling mail out of mailbags, but he offered no explanation of how this was related to the incident that occurred on October 23, 1994. Dr. Pisano failed to review the medical records contemporaneous to the claimed recurrence of December 6, 1995. Also, the history of injury he obtained from appellant was inconsistent with the contemporaneous account appellant provided on her claim form and with the accounts given by witnesses to the event. Because Dr. Pisano's report is based on an incomplete and inaccurate history and because it provides no reasoned opinion connecting appellant's disability for work on or about December 6, 1995 to the incident that occurred on October 23, 1994, his report is of diminished probative value and is insufficient to discharge appellant's burden of proof.

⁸ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

⁹ See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

¹⁰ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

The Board further finds that the Office has met its burden of proof to terminate medical benefits for the accepted conditions of cervical and lumbar strain and bilateral contusions of the arms.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹²

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹³

To resolve the conflict in opinion between appellant's physicians and the Office referral physician on the issue of whether appellant had recovered from the accepted medical conditions, the Office referred appellant to Dr. Blaker. When his original and supplemental report were found to be deficient, the Office properly selected another referee medical specialist, Dr. Liebert.¹⁴

The Office provided Dr. Liebert with a statement of accepted facts and appellant's case record so he could base his opinion on a complete and accurate factual and medical background. Dr. Liebert examined appellant on February 16, 1998, related her history and medical course and reviewed appellant's imaging studies and other medical records. He reported that appellant had fully recovered from the soft-tissue injuries she sustained to her cervical and lumbar spine and her upper extremities as the result of her work injury on October 23, 1994. Dr. Liebert explained that full recovery from these soft tissue injuries was anticipated within a six- to nine-month time frame. Given her subsequent motor vehicle accident, full recovery was anticipated within a one to one-and-a-half-year time frame from October 23, 1994. Dr. Liebert examined appellant on February 16, 1998 and found that she had fully recovered from the accepted conditions. He

¹¹ *Harold S. McGough*, 36 ECAB 332 (1984).

¹² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

¹³ 5 U.S.C. § 8123(a).

¹⁴ When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative, or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question. *Nathan L. Harrell*, 41 ECAB 402 (1990). The record fails to support that the Office improperly obtained Dr. Blaker's opinion and that his reports should therefore be excluded from the record.

found no evidence of any ongoing pathology in the upper extremities and no residual effects from any contusion.

Dr. Liebert acknowledged that appellant was diagnosed with conditions other than the soft-tissue injuries the Office had accepted. In his opinion, however, appellant had no pathology causally related to the October 23, 1994 employment injury. Although an MRI showed a small insertional tear of the supraspinatus tendon in the right shoulder, he reported that this was more likely than not on the basis of degeneration, given the MRI findings, appellant's age and his own experience dealing with similar shoulder problems in his own patients. He further reported that the right hand swelling incident in December 1995 was not causally related to the incident on October 23, 1994. Dr. Liebert explained that if appellant had some unrelated problem with her right hand because of overuse just prior to the reported onset of swelling, this would be separate in causality from the October 23, 1994 incident and, on review of the records, not totally disabling appellant from some type of gainful employment during that period of time. He saw no reason that appellant could not have returned to full duty beginning June 5, 1996 on the basis of the injuries she sustained as the result of the October 23, 1994 incident.

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to a referee medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁵ The Board finds that Dr. Liebert's opinion carries special weight in resolving the conflict that arose and establishes that appellant no longer suffers residuals of her accepted cervical and lumbar strains and bilateral contusions of the arms. The Office has, therefore, met its burden of proof to terminate medical benefits for these conditions.

The January 19, 2000 decision of the Office of Workers' Compensation Programs is affirmed.¹⁶

Dated, Washington, DC
March 25, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

¹⁵ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁶ The Board notes that Bradley T. Knott, who participated in the oral argument held on November 8, 2001 was not an alternate Board member after January 25, 2002 and did not participate in the preparation of this decision and order.